

STATE OF MICHIGAN  
COURT OF APPEALS

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JIAN LIN,

Petitioner-Appellant,

v

SOUTHFIELD TOWNSHIP,

Respondent-Appellee.

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UNPUBLISHED

June 1, 2010

No. 289276

Tax Tribunal

LC No. 00-322575

Before: JANSEN, P.J., and CAVANAGH and K. F. KELLY, JJ.

PER CURIAM.

Petitioner Jian Lin (Lin) appeals by right the Michigan Tax Tribunal’s (tax tribunal) order denying his motion for rehearing in this real property tax dispute. Lin argues that the tax tribunal erred in determining his property’s true cash value (TCV). We affirm.

Lin first argues that the tax tribunal erred in determining his property’s TCV because “upgrades” to comparable properties affect those properties’ TCVs, when the cost approach is used for valuation. We are unpersuaded by his argument. Our state constitution provides a deferential standard of judicial review of administrative agency decisions that are judicial or quasi-judicial in nature. “[Judicial] review [of agency decisions] shall include . . . the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record.” Const 1963, art 6, § 28. Agency valuation decisions are final, subject to limited exceptions: “In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation . . . .” Const 1963, art 6, § 28.

Thus, when, as here, no fraud is alleged, judicial review of tax tribunal valuation decisions is limited to whether the tribunal committed an error of law or adopted a wrong legal principle. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352; 483 NW2d 416 (1992). Courts must accept the factual findings of the tax tribunal as final, so long as they are supported by competent, material, and substantial evidence on the record. *Edward Rose Building Co v Independence Twp*, 436 Mich 620, 632; 462 NW2d 325 (1990). A tribunal decision not supported by competent, material, and substantial evidence is an error of law. *Georgetown Place Coop v City of Taylor*, 226 Mich App 33, 43; 572 NW2d 232 (1997).

Substantial evidence is more than a scintilla, but may be substantially less than a preponderance. *Jones & Laughlin Steel Corp*, 193 Mich App at 352-353.

The tax tribunal has a duty to select the valuation approach that provides the most accurate valuation under the circumstances. *Antisdale v City of Galesburg*, 420 Mich 265, 276-277; 362 NW2d 632 (1984). Deference is given to the tax tribunal regarding the appropriate method of valuation and the interpretation of statutes pertaining to valuation, because these are matters within the tribunal's area of expertise. See *Schultz v Denton Twp*, 252 Mich App 528, 529; 652 NW2d 692 (2002).

Judicial review of administrative agency decisions is generally limited strictly to the record. *Smith v Crime Victims Compensation Bd*, 130 Mich App 625, 628-629; 344 NW2d 23 (1983); see also MCR 7.210(A). The appellate courts may not supplement gaps in the record by second-guessing the administrative agency. *Id.*

A petitioner has the burden of proof, before the tax tribunal, to establish TCV. MCL 205.737(3); see also *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). This burden of proof includes the burden of persuasion, which never shifts. *Jones & Laughlin Steel Corp*, 193 Mich App at 355. Thus, in the tax tribunal, Lin had the burden to prove, by the greater weight of the evidence, that the township's assessment was too high. See *Alhi Development Co*, 110 Mich App at 767-768.

TCV is "the usual selling price at the place where the property . . . is at the time of assessment . . . [and is] the price that could be obtained . . . at a private sale, and not an auction sale . . . or a forced sale." MCL 211.27. TCV is synonymous with fair market value. *CAF Investment Co v State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

The tax tribunal and Michigan courts accept three methods of valuation: the cost-less-depreciation approach, the capitalization-of-income approach, and the market approach. *Antisdale*, 420 Mich at 276-277. As the *Antisdale* Court noted in a footnote, the State Tax Commission assessor's manual, which all government assessors are required to use, describes each of the three approaches. *Antisdale*, 420 Mich at 376 n 1. In this case, the tax tribunal rejected the cost approach and used the market approach, finding it to be the only reliable evidence of TCVs. Under the market approach, as outlined in the assessor's manual, the presence of upgrades in comparables, and the cost of those upgrades, do not necessarily mean that the comparables are more valuable than the subject property that lacks the same upgrades. See *Antisdale*, 420 Mich at 376 n 1.

Again, local assessing officials must use an assessor's manual prepared by the state tax commission as a guide. MCL 211.10e; *Danse Corp v Madison Hts*, 466 Mich 175, 179; 644 NW2d 721 (2002). Lin cites no provision in the assessor's manual indicating that, when using the market approach, the cost of improvements to comparables must be considered. By presenting an argument that conflates two different approaches to valuation (the market approach and the cost-less-depreciation approach), Lin has failed to carry his burden of showing that the tax tribunal erred in its factual findings.

Lin next argues that the tax tribunal erred in determining the TCV of his property because the tax tribunal held that “market trend” does not affect the subject property’s TCV. We disagree.

Lin’s arguments do not show an error of law or the adoption of wrong legal principles. Lin’s arguments amount to an assertion that the wrong method of valuation was used in this case and that the tax tribunal erred in its factual determination of TCV. His arguments in this regard are better addressed to expert appraisers. We typically give deference to the tax tribunal regarding the most appropriate method of valuation. See *Schultz*, 252 Mich App at 529. Lin has not shown, nor has he cited any authority from the law or the appraisal literature to suggest, that the tax tribunal’s determination that market trend is not evidence of a particular property’s TCV is a “wrong principle.” As such, Lin has failed to show error requiring reversal.

Lin next argues that the sale of a particular house in the same neighborhood in 2007 should have been used by the tax tribunal as a “reference” or “comparable” to determine the subject property’s TCV. However, Lin fails to cite authority for this argument. Therefore, it is abandoned. *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998).

But even if this argument had not been abandoned, we find that Lin’s claim lacks merit. The new documents presented by Lin, such as those from the Oakland County equalization department, are not part of the record, and cannot be considered. MCR 7.210(A); *Smith*, 130 Mich App at 628-629. Moreover, the information concerning the alleged comparable sale in 2007 was not strictly applicable here, because it was from a later date and there was no evidence that the allegedly comparable 2007 sale was an arm’s-length transaction. Lastly, even if the 2007 sale were to be considered, the sale price would have to be adjusted upward to be used as a “comp” since the transaction occurred later, during a declining market. In sum, had Lin wanted to present the 2007 sale as a comparable, it was his burden to present it to the tax tribunal with appropriate adjustments. The record shows that he failed to carry that burden.

Further, we find no error in the tax tribunal’s refusal to consider mere property listings. Lin cites no authority to contradict the tax tribunal’s determination that mere listings are not reliable indicators of TCV. This Court defers to the tax tribunal’s expertise in this area. See *Schultz*, 252 Mich App at 529.

For these reasons, we conclude that the tax tribunal did not err by refusing to consider the 2007 sale as a “reference” or “comparable” when determining the TCV of the subject property.

Finally, Lin argues that the tax tribunal erred in its determination that the decline in value from 2006 to 2007 was three percent. We disagree. Lin fails to show that the tax tribunal’s finding of a three-percent decline from 2006 to 2007 is unsupported by competent, material, and substantial evidence on the whole record, or represents error of law or the adoption of wrong principles. Const 1963, art 6, § 28.

Affirmed.

/s/ Kathleen Jansen  
/s/ Mark J. Cavanagh  
/s/ Kirsten Frank Kelly